IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 23798 of 2003(G)

PETITIONER:

ASOK KUMAR G.,
AYILLIAM, KONKALAM, ARAMADA P.O.,
TRIVANDRUM-32.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

---

1. STATE OF KERALA, REP.BY THE CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

2. DISTRICT COLLECTOR, COLLECTORATE, TRIVANDRUM.

3. THE TAHSILDAR (RR), TRIVANDRUM.

4. KELTRON LTD., VELLAYAMBALAM, TRIVANDRUM.

5. PADMAKUMAR, VASANTHA BHAVAN, KONKALAM, ARAMADA P.O., TRIVANDRUM

BY ADV. SRI.M.C.JOHN, SC FOR KELTRON
ADV. SHRI. PRADEEP, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 23798/2003

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF the SALE DEED DATED 13/11/1991 BETWEEN PETITIONER AND THE 5TH RESPONDENT.

P2 : COPY OF THE TAX RECEIPT DATED 08/06/2000.

P3 : COPY OF the TAX RECEIPT DATED 10/07/2003.

P4 : COPY OF THE attachment NOTICE DATED 17/03/2003 AFFIXED BY THE 3RD RESPONDENT.

P5 : COPY OF THE OBJECTION SENT BEFORE THE 3RD RESPONDENT ON 28/03/2003 BY THE PETITIONER.

P6 : COPY OF the SALE NOTICE DATED 28/06/2003 ISSUED BY THE 3RD RESPONDENT to the PETITIONER.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 23798 of 2003

Dated, this the 13th day of November, 2007

J U D G M E N T

Petitioner is challenging recovery proceeding for recovery of arrears due from the 5th respondent towards the 4th respondent, which is a Government of Kerala Company, which obtained decree for an amount of Rs. 1,86,737/-with interest @ 12%. Petitioner's case is that the property is purchased on 13/11/1991 and decree is subsequently received. Learned Government Pleader submitted that petitioner is none other than defaulter's brother and the transaction is therefore hit by Section 44 of the Revenue Recovery Act. The contention of the petitioner is that the suit was filed and decree obtained subsequent to purchase of the property from his defaulter brother.

2. However, prior to the filing of suit, defaulter has been served with notice of the claim and going by the proximity between the date of sale and date of filing the suit, it is obvious that the 5th respondent was aware of the impending liability and therefore the transfer of the property in favour of his brother is to save the property from attachment and sale is the contention of the learned

Government Pleader. Since the petitioner has filed the claim petition, the contention of learned Government Pleader, above referred, can be considered by the 3rd respondent while disposing the claim petition. This writ petition is, therefore, disposed of directing the 3rd respondent to consider petitioner's claim, under Section 46 read with Section 44 of the RR Act, and if transaction is hit by Section 44, he will set aside the sale deed and proceed to sell the property purchased by the petitioner from the defaulter. However, if transfer was effected without liability in contemplation, the 3rd respondent will lift the attachment and release the property to the petitioner. If petitioner's claim is allowed, there will be direction to the 3rd respondent to forward his decision to the District Collector for his scrutiny and verification of correctness of the decision.

3. In the alternative, the petitioner is given an option to settle the liability by paying the decree amount with 6% interest, and without collection charges, till date of payment, if such payment is made before the 3rd respondent on or before 31/12/2007. Petitioner can, along with production of a copy of this

judgment, undertake to pay the liability as above, for the 3rd respondent to withhold recovery proceedings until 31/12/2007. If undertaking is not made within two weeks from today, 3rd respondent will decide petitioner's claim and proceed with sale of the property, within two months from today, if the claim is rejected.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg